

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FELIX HIGHTOWER,) No. C 03-1054 JSW (PR)
Plaintiff,)
vs.) **ORDER DENYING CERTIFICATE
OF APPEALABILITY**
JOSEPH L. MCGRATH, Warden,)
Defendant.) **(Docket No. 19)**

Petitioner, a prisoner of the State of California, filed a petition for a writ of habeas corpus challenging the constitutional validity of his State conviction. On March 30, 2006, this Court entered an order denying the petition on the merits. On April 24, 2006, Petitioner filed a notice of appeal (docket no. 19).

Upon the filing of a notice of appeal and a request for a COA, the district court shall indicate which specific issue or issues satisfy the standard for issuing a certificate, or state its reasons why a certificate should not be granted. *See United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C. § 2253(c)(3)). If no express request is made for a COA, the notice of appeal shall be deemed to constitute a request for a certificate. *See id.* As such, Petitioner's notice is construed as a request for a COA.

A judge shall grant a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner has not demonstrated "that reasonable jurists would find the district court's assessment of the

1 constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
2 Accordingly, the request for a certificate of appealability is DENIED (docket no. 19).
3 The Clerk of Court shall forward this order, along with the case file, to the United States
4 Court of Appeals for the Ninth Circuit from which Petitioner may also seek a certificate
5 of appealability. *See Asrar*, 116 F.3d at 1270.

6 IT IS SO ORDERED.

7 DATED: May 18, 2006

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10 JEFFREY S. WHITE
11 United States District Judge
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